MASTER AND SERVANT—WORKMEN'S INSURANCE ACT—CONSTITUTIONAL LAW.—102 OHIO LAWS, p. 524, creating a State insurance fund for the benefit of injured and the dependents of killed employees, abolishing the defense of assumed risk where the parties are not acting under the provisions of the act, and creating a State liability board of awards, *Held,* constitutional. *State ex rel. Yaple* v. *Creamer* (Ohio 1912) 97 N. E. 602.

The objections made to the validity of the act were as follows: (1) it is an unwarranted exercise of the police power and directs the State to use public funds for private purposes; (2) it takes private property without due process of law; (3) it deprives parties of the freedom of contract and impairs the obligation of contracts; and (4) it makes an unjust and arbitrary classification. For a full discussion of the act and decision, see 10 MICH. L. REV., 345, 437.

MILITIA—ENLISTMENT OF MINORS.—Petitioner seeks the discharge of his son from the National Guard on the ground that his enlistment was illegal in that he enlisted when he was but twenty years of age and without the consent of his father. Section 1, Article 14 of the Constitution of 1885 is as follows: "All able bodied male inhabitants of this State between the ages of eighteen and forty-five years * * * shall constitute the militia of the State." Section 670 of the General Statutes of 1906 provides: "That portion of the militia organized as a land force * * * shall be composed of able bodied volunteers between eighteen and forty-five years of age." *Held,* that a minor over eighteen is bound by his enlistment into the militia of the State, even though the consent of his parents was not obtained. *Acker* v. *Bell* (Fla. 1912), 57 South. 356.

But two cases in point are discoverable: *Porter* v. *Sherburne* (1842) 21 Me. (8 Shep.) 255 and *William K. Dewey, Pet., Etc.* (1831), 11 Pick. 265. While these cases hold with the principal case, both the decisions rest upon poor authority, viz.: *Com.* v. *Frost,* 13 Mass. 491. In that case it was sought to hold one liable for non-enlistment in a company of militia. He would have been liable unless a previous enlistment in a company of artillery, which he had made when less than eighteen years old, was valid. The court held that the previous enlistment was voidable but, not having been avoided, was valid and would relieve him from the second enlistment. The decision is manifestly not in point in the cases cited *supra,* which arose from facts almost identical with those in the principal case and under very similar statutes. The Florida court did not refer to these cases and seems to have rendered its decision as though the case were without precedent. In refusing the discharge on the ground of public policy, the court has undoubtedly decided correctly on principle.

MUNICIPAL CORPORATIONS—COUNTIES—RIGHT TO ENJOIN STATE FROM MISAPPROPRIATION OF FUNDS DENIED.—A State statute provided for the construction of a system of State roads, none of which were to run through plaintiff county, and provided for a large appropriation from the State treasury to pay for same. Plaintiff county sought to have said act declared unconstitutional, and to restrain the State officers from proceeding under same. CODE,

CIV. PROC., § 1925 gives persons and corporations who are taxpayers the right to bring an action like this one; and LAWS 1892 c. 686, § 3 declares a county to be a "municipal corporation for the purpose of exercising the powers and discharging the duties of local government." *Held*, a county has no right to bring this suit under either of the above provisions, and the injunction was denied. *Albany County* v. *Hooker, et al.* (N. Y. 1912) 97 N. E. 403.

A county is primarily a governmental agent, but for the purposes of civil administration it is invested with a few functions of corporate existence. *Hamilton County* v. *Mighels*, 7 Ohio St. 109. *People* v. *Martin*, 178 Ill. 611. *Madden* v. *County of Lancaster*, 27 U. S. App. 528; 1 DILLON, MUN. CORP., Ed. 5, § 35. Inasmuch as counties are a part of the State government they cannot in their governmental capacity maintain any suit against that government, of which they form a part. If a county can maintain a suit such as this at all, it must maintain it in its capacity of a corporation. Independent of the "taxpayers" statute referred to, by the weight of authority no person or corporation could maintain an action against the State to restrain the misappropriation of funds. *Sears* v. *James*, 47 Ore. 50, 82 Pac. 14; *Davenport* v. *Elrod*, 20 S. D., 567, 107 N. W. 833; *Bilger* v. *State*, 60 Wash. 454, 111 Pac. 771; *Long* v. *Johnson*, 70 Misc. 308, 127 N. Y. Supp. 756. *Contra*: *Christmas* v. *Warfield*, 105 Md. 530, 66 Atl. 491. A county is not a taxpayer, however. It is merely the agent of the State for the convenient collection of taxes. *Lorillard* v. *Town of Munroe*, 11 N. Y. 392, 62 Am. Dec. 120; *State* v. *St. Louis County Court*, 34 Mo. 546; I DILLON, MUN. CORP., Ed. 5, § 104.

MUNICIPAL CORPORATIONS—"ULTRA VIRES" TORTS—NUISANCE.—Appellant city owned and operated a stone quarry within its corporate limits for the securing of materials for the improvement of its streets. In the course of this undertaking it engaged in blasting near a public highway. Appellee's horse while passing along this highway, became frightened both by the noise and by bits of stone which were cast upon him, and ran away, causing the injury to appellee for which this action against the city is brought. *Held*, the operation of a stone quarry is not expressly or by implication within the powers delegated to a city. In engaging in such an undertaking, the city was acting entirely *"ultra vires,"* and is not liable for any injury to third parties by reason of such undertaking. Moreover, the operation of such a quarry is a governmental and not a ministerial function; and therefore no liability attaches to the municipality. *City of Radford* v. *Clark* (Va. 1912), 73 S. E. 571.

The court follows what may be called the general rule in cases relating to injuries to third parties in the prosecution by a municipality of an *"ultra vires"* enterprise, namely, that for such injuries the municipality is not liable in damages. *Hoggard* v. *Monroe*, 51 La. Ann. 683, 25 South. 349, 44 L. R. A. 477; *Mayor of Albany* v. *Cunliff*, 2 N. Y. 165; *Duncan* v. *City of Lynchburg* (Va.), 34 S. E. 964, 48 L. R. A. 331; (*Switzer*) *Donable's Adm'r* v. *Town of Harrisonburg*, 104 Va. 533, 52 S .E. 174, 2 L. R. A. (N. S.) 910, 113 Am. St. Rep. 1056; 4 DILLON MUN. CORP., Ed. 5, §§ 1647-50, 1654. But in this case there is the added element that the undertaking amounted to a nuisance. Where special conditions such as this exist, the courts have manifested a ten-